

BEFORE THE RESEARCH & SPECIAL PROGRAMS ADMINISTRATION
AND THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

In The Matter Of: HM 232A (RIN: 2137-AD70)
Security Requirements For Motor Carriers Transporting Hazardous Materials

Comments of:
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November 15, 2002

Before the Administrator(s):

National Tank Truck Carriers, Inc. (NTTC) is a trade association composed of approximately 180 motor carriers specializing in the nationwide transportation and distribution of bulk commodities in cargo tank motor vehicles.

In the July 16, 2002 edition of the Federal Register the Administrator seeks public comment on a variety of security related concepts relevant to the transportation of hazardous materials. Importantly (and the Administrator so acknowledges), the proposal contains no attempt to "link" specific hazardous materials with specific precautionary measures. NTTC believes that this reflects RSPA's awareness that some materials are more hazardous than others. While to some extent the concepts of "safety" and "security" may be intertwined, RSPA has never ranked materials based (solely) on security considerations. "One size does NOT fill all..." in any such endeavor. Simply stated, the regulatory imposition of one type of security precaution on a family of hazardous products may well be justified. By the same token, such a security-oriented regime would not enhance security were it imposed on the transportation of all hazardous materials.

The same is true with respect to costs. It is premature to make estimates. For example, the cost of installing satellite tracking on a cargo tank semi-trailer "from scratch", may be fivefold the cost of annual maintenance and related fees when compared to utilizing a vehicle already equipped with the appliances and electronics. The installation of other technologies, such as anti-theft devices, will (as a rule) be considerably less when ordered "factory installed" for new equipment (compared to retrofit).

The same is true with regard to team drivers, relay drivers, escorts, etc. It would be unwise in this stage of regulatory development to make assumptions. For instance, today it would be reasonable to estimate that the hourly "costs"

of a tank truck driver would average approximately \$35 (including wages and benefits). Yet, many carriers will pay sizeable differentials for duties performed on weekends, holidays, etc. Thus, if a driver is pulled off of a "solo" run to become part of a team operation, another replacement driver must be hired and trained. As can be seen in such cases, an apparently "simple" security enhancement (creating a driver "team" to replace a solo operation) can produce cost factors that inflate rapidly and are most difficult to calculate.

Yet another "pending development" may cause difficulties in estimating relative personnel costs. Currently, the Federal Motor Carrier Safety Administration (FMCSA) is crafting regulations to implement a legislative mandate (in the so-called "USA Patriot Act") which will prompt criminal background checks for those holding Commercial Drivers Licenses (CDL) with "hazmat endorsements" (for both "new" licenses and renewals). All involved in this rulemaking process acknowledge that the new rules will extend the time necessary to obtain the endorsement and increase the costs for relevant CDL applicants. Thus, statutory disincentives have been created in terms of the desirability and/or necessity of obtaining a CDL with a hazmat endorsement. Since, it is reasonable to anticipate that fewer drivers will seek the endorsement, it is (today) virtually impossible to estimate either the size of the available driver pool or the costs of adding drivers to that pool (in order to accommodate the demands prompted by driver teams, relays, etc.).

Below, NTTC will comment on each of the concepts listed in the proposal.

PRE-NOTIFICATION -- As noted in the docket's preamble, pre-notification is not alien to hazardous materials transportation, particularly when applied to the movement of high-hazard (and, more appropriately "high profile") materials, such as certain munitions and radioactive materials. By the same token, RSPA has frequently declared that such schemes (when applied in less restrictive circumstances) are preempted by the Hazardous Materials Transportation Uniform Safety Act (HMTUSA).

NTTC believes that two factors combine to produce a realization that there's no need for RSPA to amend today's policy in this regard. First, there is an implied (and, in some instances, statutory) obligation for the Secretary, DOT to confer and consult with other Federal agencies in matters relevant to hazardous materials transportation safety. In fact, RSPA's preemptive power does not reach to actions of other Federal entities. Therefore, to the extent that a sister Federal agency wants "pre-notification", that agency is free to implement such a policy.

In so far as "pre-notification" (that might be required by state and local authorities), jurisdictions may avail themselves of the "waiver of preemption" provisions of HMTUSA. Again, there is no absolute barrier -- administratively or otherwise -- to a non Federal governmental body to require pre-notification, based on security and/or safety concerns, given appropriate justification.

On this same issue, we also note that, from the standpoint of security, pre-notification may do more harm than good. Of necessity, pre-notification mandates the exchange of load specific information (product names, product hazards, routes, timing, routing, carrier name, etc.). In terms of practical application, this information must be (subsequently) disseminated to a variety of individuals and organizations (primarily in the law enforcement and emergency response communities). Simply stated, the opportunity for disclosure (however

inadvertent) is high. At this point a security precaution becomes a security breach, and the consequences unpredictable.

ESCORTS -- As in the case of pre-notification, NTTC can well envision times and circumstances when escorts of shipments of hazardous materials are justified. However, we believe that the Administrator should not regulate in this area.

For starters, it should be noted that -- on a highly selective basis -- escorted shipments (both hazardous and non hazardous) move today (with both armed and unarmed). The most obvious examples are movements of "overweight/oversize" loads. It is reasonable to anticipate that, given contemporary concerns with terrorism, escorted shipments will become more commonplace.

As is evidenced by today's practices, reality dictates that carriers, shippers and the law enforcement community already have ample resources and procedures to: a) determine when escorts are desired and/or necessary; and b) implement escort requirements (even when a given shipment crosses multiple jurisdictional boundaries). Respectfully, we submit that carriers, shippers and local law enforcement are best equipped to evaluate the security risk in a given set of circumstances, and react accordingly.

In this context, we ask the Administrator to consider the fact that virtually all NTTC members have strict policies against carrying (or transporting) firearms in company vehicles (owned or leased) or on company property. Such is considered an "immediate discharge" offense. In general, our industry's customers replicate these policies. While it is obvious that a regulatory exception can be made to any "company policy", existing policies illustrate our members' concern regarding firearms in the workplace.

Sometimes, things are best left unsaid. Today's Hazardous Materials Regulations (and the Federal Motor Carrier Safety Regulations) are silent on the matter of carrying firearms in commercial motor vehicles. A reasonable person would interpret this regulatory "silence" as being permissive and a statement of deference to company policy. We suggest that this interpretation be left undisturbed.

VEHICLE TRACKING -- There is little doubt that this concept holds much promise in terms of enhancing vehicle and cargo security. Originally, vehicle tracking was introduced to the tank truck industry as a "customer add on" (largely) to assist bulk shippers and consignees to "track" loads in so-called "just in time" deliveries. (NOTE: In such transportation arrangements, the cargo tank vehicle (in essence) replaces (or supplements) on-site storage at the consignee's facility. Thus, the consignee can adjust its production schedule to accommodate the anticipated arrival of a product essential to its manufacturing process.)

"Vehicle tracking" has also produced ancillary benefits in the area of safety, in that carriers can more closely monitor driver activities, expedite routing decisions, and (should an incident occur) contact law enforcement and/or emergency response personnel.

As the Administrator notes in the preamble, there are a variety of technologies falling within the general term "vehicle tracking". Each such technology has unique cost/benefit properties. Likewise, each such technology has practical limitations and shortcomings. NTTC believes that, in terms of security, the choice of whether to utilize vehicle tracking and (if so) what technology should

be employed is best left to the shipper, carrier and consignee in any given transportation arrangement.

For example, "tracking" a bulk shipment of a "poison inhalation hazard" commodity might well be appropriate, but (for instance) the choice of "satellite" technology versus "cell phone" communications might well depend on variables such as length of haul, the proximity of the route to population centers and other circumstances unique to that load.

On the other side of the coin, there is the reality that the tank truck industry -- on any given business day -- moves approximately 45,000 loads of gasoline. As a weapon for terrorists, gasoline would be of dubious value. Gasoline loads are high volume/short haul (and nationwide) in nature. The prospect of "tracking" gasoline loads (in terms of administering such a system) would be daunting, and would drain resources from more tempting terrorist targets.

In this context, we note that RSPA and its sister Administration have joined resources to retain the research arm of Battelle Memorial Institute to study and report on the applicability of vehicle tracking services and technologies (contract # DTMC 75-01-D-00003). That study will embrace (at least) two scenarios related to bulk transportation. We urge the Administrator to take administrative notice of the study, and withhold the publication of any relevant regulatory mandates until such time as the study is completed and recommendations proffered by Battelle.

ANTI-THEFT DEVICES -- Again, as noted by RSPA in the preamble, it is "raining technology" in terms of devices designed to prevent (or deter) vehicle and cargo theft. The Battelle contract envisions the use and evaluation of a variety of such devices including: Biometric identification; immobilizers, seals (and readers), cargo locking devices, etc. As in the case of "vehicle tracking" (above), NTTC believes that RSPA should postpone any final regulatory action until such time as the research has been completed.

OPERATIONAL MEASURES -- Respectfully, we suggest that (with rare exceptions) the use of "team drivers" and/or "relay drivers" add little (except increased costs) to the "security" side of the transportation equation. Conceivably, an argument could be made that, with respect to team operations, the prime security benefit would be that one driver would be present in the cab of the vehicle while the "other driver" takes a meal or personal comfort break. Yet, that premise is undermined by the fact that a hijacker or terrorist, attempting to commandeer the vehicle, would be armed (and/or have accomplices), thus compromising or negating the value of the "second" driver (while, at the same time, putting that individual at risk). In terms of "relay" operations, there is no "second driver", so the security factors remain constant.

In the preamble, the Administrator is correct in observing that all sectors of the trucking industry (including the tank truck sector) utilize both teams and relay operations. However, such operations are conducted to satisfy the business requirements (see "just in time" (above)) of the shipper, or for other "non security" considerations (for instance, some tank truck loads (such as resins) are "temperature sensitive" and the length of haul demand team or relay drivers).

While NTTC cannot deny that, in a set of specific circumstances, the mandated use of teams or relays would enhance security; we suggest that - taken as a whole -- such a mandate could produce more negatives than positives.

Regrettably, on September 11, 2001 we saw relatively small bands of individuals, with rudimentary weapons, overwhelm trained airline flight crews (including pilots and co-pilots). Mere numbers do not equate to greater security.

SAFE HAVENS -- The tank truck industry has little experience with safe havens. Therefore we will refrain from offering substantive comment, except to note that (with very few exceptions) tank truck terminals are neither designed nor operated as "secure" areas. In general, our carriers' operational facilities are points of vehicle dispatch, vehicle maintenance and cleaning and administration. Rarely, do they provide such security enhancing measures such as: limited access; on-site "24/7" monitoring; cargo securement; alarms or lighting in yards or parking areas.

SUMMARY AND CONCLUSIONS -- Properly, RSPA has laid out a menu of practical alternatives aimed at enhancing security within hazardous materials transportation. With equal propriety, the Administrator recognizes that the transportation of some "hazmat" mandates a higher level of safety scrutiny (and consequential measures) when compared to the transportation characteristics of other placarded commodities.

NTTC believes that this rulemaking is a prime opportunity for the Department to demonstrate leadership in the implementation of security measures. Both the Legislative and Executive branches have told the transportation sector (including the tank truck industry) that, "...government will write the rules regarding security." Today, the carrier/shipper community faces a series of difficult choices. For example, if carriers invest in "Technology A", and, later on, government mandates an investment in "Technology B" then precious time and resources have been (either) wasted or misappropriated. Hopefully, RSPA will assist in resolving such real world conflicts by giving carriers and shippers "options" and "objectives". Thereafter... let the marketplace respond.

Respectfully submitted:

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President